



April 3, 2013

**VIA OVERNIGHT COURIER**

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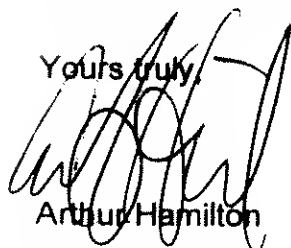
file #: 41223-1

Dear Ms. Payne:

**Re: Agency Matter  
Your File No. 16138-2**

Enclosed please find our firm's trust cheque in the amount of \$13,560.00 representing payment of your invoice dated March 4, 2013.

Yours truly,



Arthur Hamilton

ALH/sd  
Encl.

**TABLED DÉPOSÉ**  
**W/ Sénat au Sénat**

*40 R*  
**28/4/2013**

*for* **DEPUTY CLERK**  
**SOUS-GRÉFFIER**

**CASSELS BROCK & BLACKWELL LLP**

**108420**

BANK OF NOVA SCOTIA  
44 KING STREET WEST  
TORONTO, ONTARIO M5H 1H1

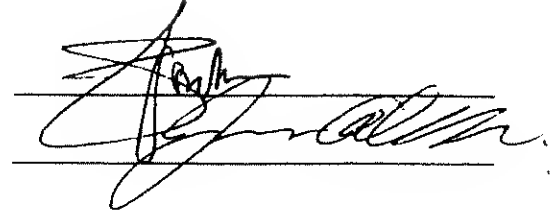
SCOTIA PLAZA, SUITE 2100 40 KING STREET WEST,  
TORONTO, CANADA M5H 3C2  
Telephone (416) 869-5300

04-03-2013  
DATE MM-DD-YYYY

Thirteen Thousand Five Hundred Sixty DOLLARS and 00/100

CDN FUNDS  
**\$13,560.00**

PAY **NELLIGAN O'BRIEN PAYNE LLP**  
TO THE  
ORDER OF



⑈108420⑈ ⑆47696⑈002⑆ 11971⑈18⑈

Re: Smear - Background FYI

From: nigel.s.wright <nigel.s.wright@gmail.com>  
To: mdduffy <mdduffy@aol.com>  
Subject: Re: Smear - Background FYI  
Date: Tue, Dec 4, 2012 9:03 am

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Mike,

I am told that you have complied with all the applicable rules and that there would be several Senators with similar arrangements. I think that the Standing Committee might review those rules.

This sure seems to be a smear. I don't know whether it is actionable, my guess is that it is not. This reporter is usually careful that way.

Nigel

Sent from my BlackBerry device on the Rogers Wireless Network

ABLED DÉPOSÉ  
In Senate au Sénat  
28/X/2013  
DEPUTY CLERK  
SOUS-CHIFFRE

From: Wright, Nigel <Nigel.Wright@pmo-cpm.gc.ca>  
To: MDDuffy <MDDuffy@aol.com>  
Subject: RE: Duff at 613-254-8411  
Date: Mon, Feb 11, 2013 5:23 pm

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I had no foreknowledge of it. When I learned of it I asked for all unilateral action from that office to cease before being cleared with me. I was not pleased. On its face, it does not make our task more complicated I think, although the "with interest" is new to me.

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From: MDDuffy@aol.com [mailto:MDDuffy@aol.com]  
Sent: February 11, 2013 5:05 PM  
To: nigel.s.wright@gmail.com  
Cc: Wright, Nigel  
Subject: Duff at 613-254-8411

What does Marjory's letter mean for our talks?

Mike

ABLED >EPUSE  
in Sénat au Sénat  
Date 28/1/2013  
DEPUTY CLERK  
SOUS-GREFFIER



MEMORANDUM

ABLED REPOSE  
in Senate au Sénat

TO: The Honourable Senator Duffy  
The Honourable Senator Wallin, OC, SOM  
FROM: Christopher McCreery  
SUBJECT: Qualifications for Senators  
DATE: 6 January 2009

28/1/2013  
DEPUTY CLERK  
SOUS-GRÉFFIER

Section 33

33. *If any Question arises respecting the Qualifications of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.*

**Translation:** The Senate is the master of its own house with regards to the proscribed property and residency qualifications required in serve in the Upper Chamber. It is up to Senators to bring up issues related to qualifications; it is not a matter for the courts.

The last time a Senator was disqualified was in 1915. All 9 of these Senators were disqualified for having missed two consecutive sessions. Since 1867 a total of 9 Senators have been disqualified;

Edward Kenny (Conservative) 1876  
Walter Dickson (Conservative) 1884  
George Alexander (Conservative) 1891  
John Sutherland (Independent) 1899  
Louis-Francois Rodrigue Masson (Conservative) 1903  
Rufus Corry (Liberal) 1905  
Michael Sullivan (Conservative) 1912  
William Macdonald (Conservative) 1915  
James Robertson (Liberal) 1915

The most recent attempt to disqualify a Senator came in 1979 when a Resolution would have been brought forward to disqualify Harold J. Connolly (Senator Carstairs' father). Connolly resigned after he had missed 2 consecutive sessions and shortly before a resolution would have been put before the Senate to disqualify him.

**The Senate has never** disqualified anyone for not being a "resident" of their province of appointment, providing they own property there.

The Senate (like the Commons) is considered to be an "Honourable" Chamber, where a member's word/oath is taken as true, so if they say they are a resident of province X and have a deed to prove it the other Honourable Members do not question this (similarly in the House of Commons all MPs give an oath to The Queen/Canada, yet we know members of the Bloc are not loyal but we don't question them on this). This convention would explain why no Senator has ever been disqualified on the basis of not being a resident of their Province of appointment.

Given that the Senate is the master of its own house in terms of the qualifications it is also right to assume that they can define precisely what "residence" constitutes, free from the definitions set out by Government Departments such as CCRA.

Nowhere in the *Rules of the Senate of Canada* are questions of residency or other qualifications (other than attendance) mentioned. Leaves of Absence and dealing with criminal convictions are examined, but Disqualification is not specifically covered.

I checked all of the authorities on the Senate and residency is not defined. My interpretation of this is that there has been a longstanding convention that so long as a Senator owns property in his or her province of appointment then they are allowed to sit as a Senator from that province, even if they live in Ottawa 99% of the time.

The last line of Section 31(5) of the Constitution provides what can best be explained as an "escape" clause in that it prevents Senators from being disqualified "*by reason only of his residing at the Seat of the Government of Canada, while holding an Office under that Government requiring his Presence there.*" A Senator cannot be disqualified for living in Ottawa, and it is again up to the Chamber to define what "requiring his Presence there" is. These are not issues which the Senate has bothered to define.

In terms of residence the other relevant sections are as follows;

#### **Section 23**

*23.(5) He shall be resident in the Province for which he is appointed;*

*(6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.*

#### **Section 31**

*31.(5) If he ceases to be qualified in respect of Property or of Residence: provided, that the Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada, while holding an Office under that Government requiring his Presence there.*

At the time of appointment a Senator must make a declaration of the Province in which he or she is being appointed to as their place of residency, this is one of the oaths they take. The oath is sufficient proof of their residency, and it would be up to members of the Chamber to challenge that. From what I have read, this has never been done because it impugns the honesty of a fellow member.

For Quebec Senators the rules are slightly different, they do not have to live in their Senatorial Division, they just have to own property there and have their residence in the Province of Quebec (i.e. for Sen. Prud'homme he owns 2 homes in Montreal, 1 here in Ottawa, and property in the LaSalle Division, but he does not actually live in the LaSalle Division). As with Senators for the rest of Canada they are covered by the last line of section 31(5) which essentially allows them to live in Ottawa.

In all of these cases the Senator MUST continue to own property in their Province of appointment. For issues such as what province to file taxes in etc, new Senators are advised to consult the Law Clerk of the Senate.

#### **Other Notes**

"5. The only ground which has been invoked to declare a seat vacant by disqualification is that of non-attendance. This has been used several times."

*Manual of Official Procedure of the Government of Canada, Vol 1, p. 531.*